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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/544,102	02/23/2006	Roelof Marissen	4662-55	7740

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EXAMINER

CUMBERLEDGE, JERRY L

ART UNIT	PAPER NUMBER
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3733

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/544,102

Applicant(s)

MARISSSEN ET AL.

Examiner

Jerry Cumberledge

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1-14 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Bonutti et al. (US Pat. 7,094,251 B2).

Bonutti et al. disclose a bone fixing device comprising a surgical cable (Fig. 22, ref. 36f) having a first end (Fig. 22, ref. 34f) and a second end (Fig. 22, ref. 32f), and at least a first fixing plate (Fig. 22, ref. 48f) and a second fixing plate (Fig. 22, ref. 46f) respectively having first and second central holes (Fig. 22, refs. 396 and 386) and second rings (Fig. 22, the portions of the plate surrounding the first and second holes) surrounding said first and second holes, wherein each of the first and second fixing plates have an outer edge (Fig. 22, outer edges of plates) defining an outer circumference thereof and an inner edge (Fig. 22, the internal sidewalls and edges of

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the sidewalls that form the holes of the plates) defining a respective one of the first and second central holes, the first fixing plate being in a stacked position on top of the second fixing plate so as to establish a gap (Fig. 22, space between the plates) therebetween such that the first and second central holes overlap each other (Fig. 22), wherein each of the first and second ends of the cable is connected to the first and second fixing plates (Fig. 22, connected by the wrapping of the cable around portions of the plates) and wherein at least one of the first and second ends of the cable is connected to the first and second fixing plates (Fig. 22, connected by the wrapping of the cable around portions of the plates), and wherein at least one of the first and second ends of the cable follows a continuous trajectory running from outside the outer edges underneath the second ring and up to the second hole, the at least one end of the cable thereafter bending upward into a first upward trajectory part (Fig. 22, ref. 390) through the second and the first holes, respectively, bending to an outward trajectory part (Fig. 22, block near ref. 46f) running across the first ring a direction from its inner edge toward its outer edge, bending to a downward trajectory part (Fig. 22, ref. 402) outside at least the edge first ring running in a direction opposite to the first upward trajectory part, bending to an inner trajectory part (Fig. 22, unlabeled block between ref. 396 and 386) running through the second central hole of the second ring, wherein the inner trajectory part includes one and other ends, the one end thereof being connected to a first radial trajectory part (Fig. 22, ref. 400) running through the gap established between the first and second fixing plates and the other end thereof being connected to a second radial trajectory part running underneath the second ring (Fig. 22, ref. 398).

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Furthermore, with regards to the trajectory of the cable, Bonutti et al. state in column 1, lines 56-58, that the "present invention includes a plurality of different features which may be utilized in combination with each other or separately." As such, the drawings of Figs. 22 and 23 are particularly relevant, since the cable is shown being wrapped around trajectory parts of the first and second plates. These wrappings of the cable can both be applied in the device shown in Fig. 22, which would then include the cable being wrapped around the trajectory parts in the device of Fig. 22.

Bonutti et al. further disclose the downward part further runs outside the outer edge of the second ring and is connected to the other end of the inner part through the second trajectory part running underneath the second ring from its outer edge to the second central hole, and wherein the one end of the inner part is immediately connected to the first trajectory part running through the gap established between the first and second fixing plates in an outward direction and ending outside the plates as a cable end (Fig. 22). The first upward, the outward, the downward, the first radial trajectory part which runs underneath the second ring in a direction from the second central hole to the outer edge thereof and ends outside the first and second fixing plates as a cable (Fig. 22). Each of the first and second ends of the cable follow the continuous trajectory (Fig. 22). The device further comprises a tensioning device (Fig. 10, ref. 172)(column 11, lines 44-46) connected to the first and the second fixing rings, wherein the other of the first and second ends of the cable is fixed to the tensioning device.

Bonutti et al. disclose a method of applying a bone fixing device according to claim 1 around the bone parts to be fixed (Fig. 1)(column 29, lines 13-18), followed by drawing the first and second ends of the cable to tension the cable around the bone parts to the tension required to fix the bone parts (column 29, lines 57-67). The method further comprises inserting a bar between the first and second fixing plates before the cable is tensioned and thereafter removing the bar after the cable has been tensioned (Fig. 8).

Bonutti et al. disclose a method for fixing bone parts comprising the steps of applying a bone fixing device according to claim 5 around the bone parts to be fixed, followed by drawing said one end of the cable to tension the cable around the bone and then tensioning the cable to the tension required to fix the bone parts by means of the tensioning device (column 29, lines 57-67).

Bonutti et al. disclose a set of at least two fixing plates (Fig. 22, ref. 46f)(Fig. 22, ref. 48f) and a surgical cable (Fig. 22, ref. 36f) fitted for constructing a bone fixing device according to claim 1. Fixing plate (Fig. 22, ref. 46f) prepared for application in a bone fixing device according to claim 1. Surgical cable (Fig. 22, ref. 36f) prepared for application in a bone fixing device according to claim 1. Set of at least two fixing plates (Fig. 22, ref. 46f)(Fig. 22, ref. 48f) and a surgical cable (Fig. 22, ref. 36f) prepared for application in the method of claim 6. Fixing plate (Fig. 22, ref. 46f) prepared for application in the method of claim 6. Surgical cable (Fig. 22, ref. 36f) prepared for application in the method of claim 6.

With regards to statement of intended use and other functional statements, they do not impose any structural limitations on the claims distinguishable over the device of Bonutti et al., which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the law of anticipation does not require that the reference "teach" what the subject patent teaches, but rather it is only necessary that the claims under attack "read on" something in the reference. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781 (CCPA 1983). Furthermore, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry Cumberledge whose telephone number is (571) 272-2289. The examiner can normally be reached on Monday - Friday, 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JLC



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER